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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 372

PAUL GINSBURG, Petitioner

v.

HON. PHILIP L. SULLIVAN, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and HON. ROY H. JOHNSON, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The petitioner makes this reply to the "Answer To Petition For Certiorari" filed for the respondents just as if it were a Brief In Opposition timely filed under the Rules.

The "Answer" of the respondents was made, of course, by the same attorneys who are the defendants in petitioner's civil action for damages in the District Court (App. 1-2, 13-14) before respondent Judge Philip L. Sullivan; and who prior to the pre-trial conference before Judge Sullivan, wherein they appeared as defendants pro se, started to represent the interests of the Judge's brother, Harold E. Sullivan, Esquire, *after* his appeal was filed from convictions of income tax evasion, and on whose behalf they made the principal argument in the Court of Appeals and the only argument in this Honorable Court at No. 1 October Term, 1957 (App. 3, 15);

and who still are representing the interests of said Judge's brother in that case on remand to the District Court as well as in other criminal cases in which the Judge's brother has been indicted. After these persuasive attorneys prevailed upon the lower courts in Chicago to render decisions which slaughtered the Federal Rules of Civil Procedure and the law of the land, they now presume to reappear before this Honorable Court to defend the respondents' actions which are inexcusable, indefensible and judicially obnoxious beyond belief in this most western of the Western Democracies. Not even ignorance could be accepted as a defense, as it does not take a member of the bar to know how wrong and illegal their actions have been. Laymen readily understand it. It is respectfully submitted that this Honorable Court should hasten to deordorize these current slaughterhouse cases from Chicago before said cases get cited by others for a similar escape from their liabilities imposed by law.

The reappearance of these attorneys herein gives added weight to petitioner's prior contention that respondent Judge Sullivan should have disqualified himself (App. 23-24). Certainly the reasons of Mr. Justice Frankfurter for recusing himself and declining to take part in the consideration or decision of the case of *Public Utilities Commission of the District of Columbia, et al., v. Pollak, et al.*, 343 U. S. 451, should have applied *a fortiori* to Judge Sullivan below. In said case Mr. Justice Frankfurter stated (466-7), "But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may oper-

ate in the ultimate judgment, or may not unfairly lead others to believe they are operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact". Since Judge Sullivan was actually conscious of the fact that his counsel herein, who were petitioner's defendants before His Honor, were then and still are entrusted with the freedom of the Judge's brother (App. 23-24) from sentencing to imprisonment, payment of fines, subsequent disbarment, etcetera, could anyone be so naive as to believe that Judge Sullivan was not even having subconscious or unconscious feelings in the matter?

This is no time for the respondents to invoke (p. 2) what "our law provides", because our law is all against them. They never invoked our law before, when they rendered those Chicago decisions. Contrarily, they butchered our law in Chicago. When they refer (p. 2) to the "final" adjudication below, they pray that this Honorable Court should enter a conflict with its decision in the case of Judge Sullivan's brother, *United States of America v. Shotwell Manufacturing Co., Harold E. Sullivan, et al.*, 355 U. S. 233, wherein this Court remanded the case to the District Court for further proceedings after a "final" adjudication. Therefore, it is the petitioner who invokes our law, *again*, and our law leaves this Honorable Court no alternative but to grant certiorari.

Even assuming *arguendo* that the "Answer" of respondents be true instead of false, tenable instead of untenable and supportable instead of insupportable, the

"answer" does not contain any legal defense whatever for the respondent Judge, and does not even attempt to defend the respondent Clerk's refusal to file and make Docket Entries of petitioner's pleadings (App. 10-11, 23-24). What more serious and appalling departures from the usual and accepted course of judicial proceedings could confront this Honorable Court to provoke the exercise of its powers of supervision over the lower courts? Therefore, the "Answer" must be taken as a mere hope that certiorari be denied and actually as a real admission by the respondents that certiorari should be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner